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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

PHILIP M. CONTRERAS, on
behalf of himself and all others
similarly situated,

Plaintiffs,

v.

PFIZER INC., a Delaware
corporation, doing business in
California as PFIZER PRODUCTS,
INC.; and DOES 1 to 50, Inclusive,

Defendants.

CASE NO. : CV 09-03405 PVT
ORDER APPROVING
STIPULATION TO STAY ACTION

1 **THE PARTIES HEREBY STIPULATE AS FOLLOWS:**

2 **PLEASE TAKE NOTICE** that all parties desire to stay the proceedings in this
 3 action pending the outcome of three appeals that directly implicate the central issue in
 4 this case, i.e., whether pharmaceutical sales representatives are properly classified as
 5 exempt from Cal. Labor Code overtime requirements under either the outside sales or
 6 administrative exemptions. *See D'Este v. Bayer*, 07-56577, *Barnick v. Wyeth*, 07-56684,
 7 *Menes v. Roche*, 08-55286 (consolidated 9th Circuit appeals); *In Re Novartis Wage and*
 8 *Hour Litigation*, No. 09-0437 (2nd Cir.); and [Add J&J Case in 3d Circuit). A stay of
 9 this action pending a decision concerning the applicability of the outside sales and/or
 10 administrative exemptions under California law will promote efficiency and conserve
 11 the resources of the court and the parties.

12 On February 11, 2009, the Ninth Circuit Court of Appeals heard oral argument
 13 in the consolidated cases of *Menes v. Roche*, 08-55286, *D'Este v. Bayer*, 07-56577, and
 14 *Barnick v. Wyeth*, 07-56684. In all three appeals, the district courts had awarded
 15 summary judgment to defendants based on the outside sales exemption under California
 16 law.

17 On May 5, 2009, the Ninth Circuit certified two questions to the California
 18 Supreme Court, addressing both the outside sales and the administrative exemptions as
 19 applied to pharmaceutical representatives. On June 10, 2009, the California Supreme
 20 Court denied the Ninth Circuit's request. On July 15, 2009, the Ninth Circuit entered
 21 an order withdrawing *Menes v. Roche*, 08-55286, *D'Este v. Bayer*, 07-56577, and
 22 *Barnick v. Wyeth*, 07-56684 from submission pending issuance of the mandate in *Harris*
 23 *v. Superior Court*, No. 515655, review granted by 171 P.3d 545 (Cal. 2007). The
 24 consolidated cases will be resubmitted to the Ninth Circuit within twenty days of the
 25 California Supreme Court's decision in *Harris v. Superior Court*.

26 The Second Circuit Court of Appeals is also considering an appeal from a district
 27 court order awarding summary judgment to a defendant pharmaceutical company by
 28 concluding that pharmaceutical sales representatives are properly classified as exempt
 outside sales or administrative employees under the Fair Labor Standards Act as well

as New York and California law. *See In Re Novartis Wage and Hour Litigation*, 593 F.Supp.2d 697 (S.D.N.Y. 2009), *appeal pending*, No. 09-0437 (2nd Cir). The Plaintiffs/Appellants filed their opening brief on June 8, 2009. The Department of Labor filed an amicus brief in support of Plaintiffs/Appellants on October 14, 2009. Defendant/Appellee filed its brief on October 26, 2009.

Other federal district courts have stayed similar cases concerning the classification of pharmaceutical sales representatives pending appeals in related actions. *See Silverman v. GlaxoSmithKline PLC*, 06 cv 7272 DSF (C.D. Cal. Dec. 17, 2008) [Dkt. No. 188]; *Thorpe v. Abbott Laboratories, Inc.*, 5:07-cv-05672 RMW (N.D. Cal. Mar. 5, 2009) [Dkt. No. 54]. *See also Freeman v. Hoffman LaRoche Inc.*, 07-1503 JLL (D.N.J. Mar. 24, 2009) [Dkt. No. 110] (upon plaintiffs' unopposed motion to stay, district court administratively terminated the action subject to plaintiffs' right to request reinstatement within 60 days of final resolution of appeal); *Brody v. Astrazeneca Pharmaceuticals, LP*, 08-56120 (9th Cir. Mar. 3, 2009). Moreover, neither party would be prejudiced by a stay in this action.

Wherefore, the parties respectfully request that the Court approve this stipulation for a Stay of Proceedings, and continue the Joint Case Management Conference set for November 20, 2009 pending the resolution of one or both of the aforementioned appeals.

IT IS SO STIPULATED

DATED: October 30, 2009

KINGSLEY & KINGSLEY, APC

By: /s/
ERIC B. KINGSLEY
Attorney for Plaintiff

IT IS SO ORDERED.

DATED: 11/5/2009

DATED: October 30, 2009

LITTLER MENDELSON

By: /s/
TODD K. BOYER
JAMES N. BOUDREAU
Attorneys for Defendants


JEFFREY FOGEL
United States District Judge